

(2014) 02 JH CK 0011
In the Jharkhand High Court
Case No : L.P.A. No. 205 of 2013

Hari Mohan Ram

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-02-2014

Acts Referred:

Citation : (2014) 2 JLJR 257

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Sudhir Kumar, Advocate for the Appellant; Rajesh Kumar, Advocate for the Respondent

Judgement

1. Being aggrieved by the order passed by the learned Single Judge in W.P. (S) No. 4253 of 2012 dated 24.09.2012 in and by which the learned Single Judge dismissed the writ petition declining to interfere with the punishment of dismissal from service imposed on the appellant this appeal has been filed by the appellant. The appellant joined the police service on 1.7.1976 and served the department with unblemished service record for about 29 years and during his service period he was also awarded with 19 rewards. In the year 2003, the appellant was transferred to Kadma Police Station, at Jamshedpur. The charges against the appellant is that on 12.07.2004 while he was on duty at Kadma Police Station, he was found in drunken condition. Further charge against the appellant is that on 14.07.2004 when the appellant was deputed on duty at State Bank of India, New Rani Kudur Branch, Jamshedpur he was found absent from duty and on search the appellant was found under drunken condition in the barrack. On the above charges, a departmental proceeding was initiated against the appellant vide Departmental Proceeding No. 89 of 2004. In the departmental proceeding, the enquiry was conducted and charges levelled against the appellant was found proved. The disciplinary authority-Superintendent of Police, Jamshedpur vide order dated 20.04.2005 imposed the punishment of dismissal from service on the appellant. The appeal filed by the appellant before the appellate authority-

Deputy Inspector General of Police was dismissed vide order dated 8.01.2006. Thereafter, the appellant had also filed a Appeal Memorial before the Director General of Police and the same was also dismissed on 23.2.2007.

2. According to the appellant, after the appeal was dismissed by Director General of Police, the appellant, by series of representations, represented before the Home Secretary, Department of Home and to the Principal Secretary, Department of Home between 2008 to 2010 but the appellant's representations were not heard and no relief was granted to the appellant. According to appellant since there was no response from the State Government, the appellant also made an appeal to the Excellency, the Governor of Jharkhand on 21.7.2011 and 11.2.2012 expressing his financial difficulties and praying for mercy and modification of the order of punishment of dismissal from service as compulsory retirement. According to the appellant, since there was no response from any corner, the appellant having no alternative had filed the writ petition being W.P. (S) No. 4253 of 2012 before this Court challenging the order of dismissal from service imposed on him and also the order of appellate authority.

3. The learned Single Judge dismissed the writ petition only on the ground that the order of dismissal was passed on 30.4.2005 and appeal was dismissed in the year 2007 therefore, there is inordinate delay and laches in approaching the Court. The learned Single Judge dismissed the writ petition only on the ground that the writ petition cannot be entertained at the belated stage.

4. We have Mr. Sudhir Kumar learned counsel appearing for the appellant and Mr. Rajesh Kumar learned counsel appearing for the respondents-State.

5. The learned counsel appearing for the appellant submitted that there was no proper enquiry conducted against the appellant and without considering the same disciplinary authority passed the order of dismissal from service on 30.4.2005. The learned counsel further submitted that even when the charges were not supported by any material, the appellate authority dismissed the appeal vide order dated 8.1.2006 and Appeal Memorial on 23.02.2007. Learned counsel further submitted that the appellant made series of representations before Secretary, Department of Home and the Principal Secretary, Department of Home, Government of Jharkhand between 2008 to 2010 and thereafter also made representation before Excellency, Governor of Jharkhand expressing his financial difficulties and praying for mercy and modification of the punishment. Learned counsel submitted that appellant cannot be faulted in approaching this Court in the year 2012 and while so the learned Single Judge was not right in dismissing the writ petition solely on the ground of delay and laches. Learned counsel further submitted that appellant's unblemished service record of about 29 years and that he has been awarded with 19 rewards have not been taken into consideration by the disciplinary authority as well as by the appellate authority hence, the punishment of dismissal of service imposed on the appellant is harsh and disproportionate and therefore, prayed for setting aside the order of dismissal from service.

6. In the supplementary affidavit filed on behalf of appellant, it is stated that under Rule 853(A)(Kh) of the Police Manual, the appellant has filed representation before the State Government to consider the case of the appellant. It is stated that the said representation filed by the appellant is still pending.

7. It is a matter of record that the appellant joined the police department on 1.07.1976 has served the police department for 29-30 years. According to the appellant during his long period of service no disciplinary proceeding was initiated against the appellant and at no point of time any kind of punishment was imposed upon the appellant. According to the appellant during his unblemished service period of 29-30 years, the appellant has been awarded with 19 rewards. On behalf of appellant, it was submitted that the appellant had unblemished service period 29-30 years, which has not been taken into consideration both by appellate authority as well as by revisional authority.

8. This Court is of the view that the appellant has served for more than 29 years and has also been awarded 19 rewards. As per the allegations of charge, the appellant was found drunken on 12.7.2004 and further charge against the appellant is that on 13.07.2004, the appellant was found in drunken condition near Paul Hotel and was shouting and creating nuisance and that he was found to be absent from duty on 14.7.2004. However, no one from the public was examined. No pathological test has been carried out and since foul smell was coming out from the mouth of the appellant, it has been concluded that he was drunken. It is well settled that unless the charge is "gravest" in nature, the punishment or dismissal from service cannot be awarded. Having regard to the nature of charge levelled against the appellant and also keeping in view his long service, we are of the view that the punishment of dismissal from service appears to be harsh and disproportionate. In the Mercy Petition before the Governor, the appellant himself sought for only modification of sentence from dismissal to compulsory retirement which we also feel would be reasonable. The punishment of dismissal from service would deprive the appellant all the benefit of the past 29 years of service. Considering his long service and that his representation before the Principal Secretary, Department of Home is pending, we deem it appropriate to direct the Principal Secretary, Department of Home to consider the representation of the petitioner regarding the quantum of punishment. Order passed by the learned Single Judge passed in W.P. (S) No. 4253 of 2012 is set aside and this Letters Patent Appeal is allowed. We direct the Principal Secretary, Department of Home to consider the representation of the appellant filed under Rule 853(A)(KH) of the Police Manual (if already filed) sympathetically and pass order within a period of eight weeks from date of receipt of copy of this order. And if the earlier representation of the appellant is not available or traceable, the appellant may file fresh representation before the Principal Secretary, Department of Home, within a period of four weeks from the date of receipt of copy of this order, who in turn, shall pass order within a period of eight weeks thereafter. While considering the representation, the Principal

Secretary, Department of Home shall keep in view the long service period of the appellant and also the fact that the appellant had good service record and that he was awarded 19 rewards and observation made by this Court in paragraphs 9 and 10 of this order.